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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0524**  
**April 6, 2011**

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The Honorable John Mica  
Chairman  
House Transportation and  
Infrastructure Committee  
2165 Rayburn House Office Building  
Washington, DC 20515

The Honorable Bill Shuster  
Chairman  
House Subcommittee on Railroads,  
Pipelines and Hazardous Materials  
204 Cannon House Office Building  
Washington, DC 20515

Dear Chairman Mica and Chairman Shuster:

Thank you for inviting my constituent, Mackenzie Souser, and me to testify regarding rail safety at the March 17<sup>th</sup> hearing at the Subcommittee on Railroads, Pipelines and Hazardous Materials. I appreciated very much the opportunity to highlight the events that led to the September 12, 2008 Metrolink crash in Chatsworth, California.

Following the hearing, you received a letter from Mr. Mark Joseph, the Vice Chairman and CEO of Veolia Transportation. In the letter, Mr. Joseph made numerous assertions that were not accurate. Mr. Joseph also claimed that I made some false statements in my testimony before the Subcommittee. I take such accusations seriously and would, therefore, like to respond to each of Mr. Joseph's allegations.

**Veolia Claim #1: Mr. Joseph claims I suffered a personal loss in the Chatsworth tragedy due to the death of Doyle Souser and that this personal loss is connected to Veolia's claim that I have misrepresented the facts in this matter. (Page 1 of 3/24/2011 Mark Joseph letter)**

Answer: This claim is categorically false. I had never met or even heard of Mr. Souser prior to the September 12, 2008 Chatsworth tragedy.

**Veolia Claim #2: Mr. Joseph claims that Veolia did not have "a culture of ignoring risk and accepting rule violations" as was asserted by Rep. Gallegly in his testimony on March 17. (Page 2 of 3/24/2011 Mark Joseph letter.)**

Answer:

The NTSB investigation and the litigation between Veolia and the victims of the Chatsworth tragedy found the following examples of rule violations and a culture that ignored risk on the part of Veolia:

September 7, 2006 Efficiency Test

On September 7, 2006, as part of an efficiency test, Mr. Dahl, a supervisor at Connex (Connex is a subsidiary of Veolia) discovered that the engineer who was operating the train, Robert Sanchez, had his cell phone turned on in his bag. This is a direct violation of company rules. This was the same Robert Sanchez who was operating the train at the time of the Chatsworth crash on September 12, 2008. (Connex Rail Efficiency Test Report from 6/25/2005 to 9/12/2008).

Early August 2008 – Sanchez has Cell Phone in Locomotive Cab

About 1 month before the accident, in early August 2008, Conductor Heldenbrand saw Mr. Sanchez's cell phone on the dash (console) of the locomotive cab car while Mr. Sanchez was operating the train. Again, having a cell phone in the locomotive cab car violated company rules. Heldenbrand reminded Sanchez of the prohibition.

According to the NTSB Report:

"The conductor said the engineer acknowledged that such use was a violation of company rules. The conductor reported the incident to a supervisor (Dahl) who, according to testimony during the public hearing on this accident, once again counseled the engineer with regard to the rule regarding use of wireless devices." (NTSB Accident Report dated 1/21/2010, page 55)

After this second rule violation for having a cell phone or using a cell phone in the locomotive, there is no documentary evidence that Dahl or any other Veolia manager did anything to ensure that Sanchez stopped texting or using his cell phone. Moreover, Supervisor Dahl already was well aware of Mr. Sanchez's prior cell phone rule violation because Mr. Dahl was the manager who observed and reported it in the September 2006 efficiency report. (Connex Cell Phone Efficiency Test Report, June 25, 2005 through September 12, 2008.) That time, he tested Mr. Sanchez by calling his private cell phone number. Despite this knowledge, between the time he was advised by Conductor Heldenbrand in early August 2008 of Sanchez's cell phone rule violation and the crash, Dahl did not again call the cell phone number. (Richard Dahl 2/24/10 Deposition, pages 99-100.)

Heldenbrand's Call to Conductor Leo on September 12, 2008

As I discussed during the hearing, on the day of the accident Conductor Heldenbrand called another conductor, Chris Leo, to seek his advice because



Heldenbrand remained so concerned about Veolia management doing nothing to stop Sanchez's cell phone use. (Robert Heldenbrand 5/20/10 Deposition, pages 90-91; Christopher Leo 3/16/10 Deposition, pages 23-27; Christopher Leo 1/21/09 NTSB Testimony, pages 5-8.) This call by Heldenbrand to Leo was only about two hours before the 4:22 P.M. collision of September 12, 2008. There is no doubt that it is unusual for a crew member to report his fellow crew member unless he believed it to be a very serious and urgent matter.

Even though common carriers have an elevated duty of care to passengers, these instances demonstrate Veolia's lackadaisical approach to the handling of a known rule breaker operating the Metrolink train. As I demonstrated at the hearing, Mr. Sanchez continued to violate the cell phone rules and to send and receive hundreds of text messages while being responsible for operating the train. As the NTSB's review of the cell phone records revealed, the subject matter of many of the text messages in the week preceding the crash and on the day of the crash related to another major safety violation: allowing unauthorized persons in the cab. The text messages showed that Mr. Sanchez invited a rail fan for a "ride along" with him in the control compartment on the Tuesday before the Friday accident, and that on the day of the collision, Mr. Sanchez was arranging to have the same unauthorized person operate the train. (1/21/2010 NTSB Accident Report, pages 34-35).

**Veolia Claim #3: Mr. Joseph states that Rep. Gallegly presented an exhibit at the hearing "purporting" to show the cell phone activity of the train engineer on the days prior to the accident and asserted that Veolia managers know of this cell phone use and did nothing to stop this. (Page 2 of 3/24/2011 Mark Joseph letter.)**

Answer:

The chart that I presented to the House Transportation and Infrastructure Committee did in fact demonstrate, in detail, the cell phone usage by Mr. Sanchez based on actual cell phone records. The data on Rep. Gallegly's chart is taken directly from a chart found on page 32 of the 1/21/2010 NTSB Accident Report. The only difference between the NTSB chart and the chart I showed is that my chart combines the cell phone usage of the morning and afternoon shifts into a single bar on the graph, while the NTSB chart has a separate bar for the morning and afternoon shifts. Otherwise, the chart I presented and the NTSB are identical and based on actual cell phone usage records. My response to Claim #2 discusses the issue of Veolia's awareness of Mr. Sanchez's having a cell phone with him while operating a train in violation of written rules.

The Honorable John Mica  
The Honorable Bill Shuster  
April 6, 2011  
Page 4

**Veolia Claim #4: Mr. Joseph claims that Rep. Gallegly's assertions that Conductor Heldenbrand had complained to his supervisors about cell phone use by Mr. Sanchez before the accident and that he had been ignored by those supervisors are false. (Page 2 of 3/24/2011 Mark Joseph letter.)**

Answer:

As I discussed above in response to Claim #2, the evidence demonstrates, contrary to the assertions by Mr. Joseph in his letter, that Conductor Heldenbrand did complain to Supervisor Dahl in early August 2008 and that Dahl took no steps to verify that Sanchez was not using his cell phone.

As also discussed in relation to Claim #2, on the very day of the tragedy, because nothing had been done to stop Mr. Sanchez's cell phone use, Conductor Heldenbrand took the very unusual action of calling another conductor, Chris Leo, because Heldenbrand was so concerned that Veolia's managers had allowed Sanchez's cell phone use to continue. (Robert Heldenbrand 5/20/10 Deposition, pages 90-91; Christopher Leo 3/16/10 Deposition, pages 23-27; Christopher Leo 1/21/09 NTSB Testimony, pages 5-8.)

**Veolia Claim #5: Mr. Joseph also claims that Veolia had to hire all Amtrak crews in good standing, including Engineer Sanchez.... (Page 3 of 3/24/2011 Mark Joseph letter.)**

Answer:

It is true that as to those Amtrak crews who were already working at Metrolink when Veolia took over in June, 2005, all in good standing had to be hired by Veolia. However, after that, Veolia was free to look anywhere to hire new crew members. Robert Sanchez was hired after the Veolia contract began; he was hired on August 20, 2005. (Connex/Metrolink Employee Emergency Information Form) Therefore, Veolia could and should have used a proper screening process to be certain that Mr. Sanchez would be a competent, rule-following and safe employee.

**Veolia Claim #6: In his letter, Mr. Joseph disputes my assertion that the \$200 million is inadequate to pay the damages claims for victims and their families. Mr. Joseph states that to arrive at this amount "one would have to accept valuations that far exceed the norm in serious accident cases." (Page 4 of 3/24/2011 Mark Joseph letter.)**



The Honorable John Mica  
The Honorable Bill Shuster  
April 6, 2011  
Page 5

Answer:

A highly-respected retired judge who independently evaluated all of the claims arising from the Chatsworth collision estimated that the victims' aggregated damages range from at least double the current liability limit to over \$600 million.

Also, Veolia has become the plaintiff in a federal court interpleader action seeking approval of \$200 million as the total damage amount in this case. The have stated in court papers that all parties concede that the liability for claims arising from the Chatsworth collision "exceed \$200 million .... Because the damages sustained exceed the damages cap, this case presents a true limited fund situation." (Notice of Motion and Motion for an Order Confirming Interpleader Conditions and Discharging Released Parties, page 15, lines 14-21.)

Moreover, common sense and the practice of insurance companies, supports the fact that Veolia's and Metrolink's insurance carriers believed the total damages to exceed the \$200 million cap or they would not have agreed to pay the cap's maximum amount. Otherwise their policy holders would have complained. Insurance companies do not willingly give away money regardless of the harm done by their policy holders.

If you have any question or would like to discuss, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elton Galelgy', with a stylized flourish at the end.

ELTON GALELGLY  
Member of Congress